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Your Ref:  
Our Ref: NJS/Sub/TSRU

Dear Justin,

### **Next Generation Networks; Further Consultation**

Kingston Communications (Hull) Plc (Kingston) welcomes the opportunity to respond to the further consultation on the regulatory implications of the introduction of Next Generation Networks.

Kingston supports the submission made by UKCTA, however there are areas that we would particularly wish to focus on that are of particular interest to the Kingston Group. This response therefore comments only on those particular areas. In addition, we are conscious that elements of the proposed TSR derived "Undertakings" address NGN related issues. We are concerned that aspects of these may undermine the establishment of the "level playing field" regime that Ofcom is seeking to establish:

- In Sections 11.6 and 11.7 of the undertakings, there is an attempt to ensure that input equivalence will be built in to 21CN. However, 11.9 then undermines that attempt by disapplying the statements where such "building in" would not be 'reasonably practicable'. We have no clarity on how this term would be interpreted by Ofcom and consequently fear that what we hoped would be a fundamental rebalancing of competitive opportunity could be subject to arbitrary waiver.
- Whilst we agree with the underlying rationale of section 11.3, we have concerns that the consultation process that BT is obliged to enter into with other Communications Providers is ill defined and could lead to dispute and uncertainty unless clear standards and procedural guidelines are established. We would suggest that, for this exemption to be applicable:
  - (a) The consultation should be adequately publicised, have a defined response deadline, and be clearly identified as pursuant to clause 11.3 of undertakings;
  - (b) The consultation should only be deemed to be underway if those consulted have access to sufficient information to make an informed response (and if not, the consultation and design decision should be delayed until they do); and
  - (c) BT should make public the outcome of the consultation.

- Section 11.18 sets out the principles that BT must use in making compensation to a Communications Provider for network costs necessarily borne as a result of notified planned changes to access and interconnection arrangements. We have some fundamental issues with the approach proposed. The principles of compensation to other operators for unilateral changes to interconnect arrangements are already dealt with in the “Systems Alteration” clause of the BT Standard Interconnect Agreement. This makes it clear that **all** of the costs incurred in altering the other Party’s System, “consistent with good engineering practice” should be paid by BT, unless agreed otherwise or as directed by Ofcom. Therefore, we do not understand why the word ‘network’ has been inserted as a qualifier on “costs” in 11.18, and request that it be removed. If it has been inserted in order to exclude costs such as changes to billing/mediation or customer communications, then that would be contrary to the position set out in the BT SIA and also in paragraphs 3.27 and 3.29 of Ofcom’s further consultation on NGN.
- The safeguards contained in the undertakings are for the most part contingent on there being a finding of SMP, which raises the serious concern that BT’s behaviour in new markets will only be constrained after a lengthy market review process. In discussions in the 21Consult Steering Board, and elsewhere, Ofcom have confirmed that market reviews will be necessary to determine whether 21CN/NGN delivered services are effective substitutes for those delivered over legacy networks where BT has been deemed to have SMP. It would seem to us that this process could take some considerable time, with the effect that prospects for competition may have suffered irreparable harm. We would strongly advocate that Ofcom take a more proactive role in analysing and identifying markets in which BT may enjoy enduring SMP after 21CN deployment (including insisting on greater disclosure by BT of its strategic plans), in order to provide early guidance to both BT and its competitors. We would also urge Ofcom to plan for an early review of the undertakings, to be conducted 2 to 3 years after they take effect, focused on the effectiveness of the undertakings in respect of next generation application and service markets.

## Consultation Questions

In response to the questions Kingston is using the term “Operator(s)” as an organisation(s) with legacy interconnect products in place and equally the purchaser of NGN interconnect products. The more generic term of “Public Electronic Communications Network Provider” would be more appropriate, but “Operator” is used to reflect similar use throughout the condoc by Ofcom.

1. *Do you agree with Ofcom’s proposed approach for the charges of narrowband voice SMP products provided over next generation interconnects?*

As we understand it, BT are proposing that, in the first instance, NGN interconnect for SMP services would be governed by existing commercial arrangements for their legacy equivalents. We note Ofcom's position that their aim is to ensure a "technology neutral" approach to regulation and that it is important to ensure that there is a smooth transition from current arrangements for legacy networks. However, BT's starting point appears to be that the Network Charge Cap derived interconnect prices would be, in effect, mandatory until the completion of their 21CN migration. It is not clear to us that this would fairly represent the cost drivers of an efficiently designed and deployed NGN.

Whilst we appreciate Ofcom's arguments about seeking to avoid inappropriate arbitrage opportunities, we do believe that the proper economic signals should be sent as soon as possible. Fundamentally, BT is seeking to make the transition from its current network topology to an NGN in order to deliver costs savings. Such costs savings should also be delivered to its customers buying services to which SMP applies. The sooner this is done, the more likely a concerted industry migration occurs, to the economic benefit of all. We believe that the early identification of what constitutes the most appropriate interconnect regime is a vital building block in ensuring that fundamental "equivalence of opportunity" is delivered. We would urge Ofcom to take a pro-active role in ensuring that this is the case, rather than wait until inconclusive and potentially time consuming "negotiation" has ground to a halt. We would suggest that Ofcom, as a priority, should launch a policy exercise to identify NGN cost drivers, and develop a detailed cost model for 21CN, based on BT's actual costs rather than those that may be imputed for a notional "efficient operator"<sup>1</sup>. From this, the most appropriate options for NGN interconnect charging structure and pricing can be identified and implemented, through Ofcom direction if necessary.

*2. Do you agree with the overall approach that there needs to be continuity for existing SMP products, but that it would not appropriate to continue them indefinitely?*

Kingston agrees that product requirements change over a period of time. The criteria that Ofcom have set out seem appropriate.

*3. Do you agree with the general criteria Ofcom has proposed for the withdrawal of legacy SMP products after an interim period?*

The date of Oct 2009, as set for the narrowband products, represents only slightly less than 4 years of NGN, assuming early IP NGN interconnects start in 2006. We are not convinced that this timetable is going to be sufficient for all operators (or indeed will necessarily be adhered to by BT). We note the need for prior consultation to ensure market certainty.

*4. Which network intelligence capabilities are likely to be associated with the underlying network where BT has SMP and cannot be independently provided by alternative providers, and why?*

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<sup>1</sup> Since we suspect that BT may have been able to negotiate rather more favourable commercial arrangements with its vendors than would normally be assumed to be the case. If so, the ensuing benefits must be fairly distributed to all downstream customers.

Kingston notes that Ofcom has made an excellent start in identifying the issues in this area but that it is very early for an informed and effective debate. We are not yet clear to what extent many of the service attributes or capabilities represent real economic bottlenecks which require *ex ante* regulation, or to what extent they are capable of supporting effective competition. Clearly where BT, or indeed any operator has bottleneck control, regulatory intervention is appropriate. In that context ADQoS, or its network level equivalent may be viewed as critical to the delivery of the equivalent of “narrowband termination” in a new multi-service NGN world and, hence, susceptible to regulatory oversight. On the other hand, DRM does not appear to throw up any real bottleneck problems. The more problematic issues may arise where, in Directory Services and related areas, leveraged dominance may be exhibited, in that, the possession of a core database of customer related information may preclude effective market entry in downstream markets. Kingston notes that BT has a commercial need to develop appropriate network hooks and tools with Industry and this process is moving forward, albeit slowly. We welcome Ofcom’s support for this process but would suggest that it may be premature to take too prescriptive a position since most operators are as yet unclear on the impact of these issues.

*5. What are your views of the practical implications of applying Equivalence of Input to NGNs (eg in relation to MSAN interconnection, end-to-end quality of service, and depth of network hooks)?*

The principle of equivalence of input is clearly vital. Kingston notes the analysis of some of the architectural issues that the concept will pose for NGNs in Annex F and is broadly comfortable with the approach adopted. However, the architectural options need to be mapped onto the appropriate market definition and market review exercises in order to determine where SMP arises and what are the appropriate regulatory remedies in terms of the access service technical options available. If, as seems currently likely, such review can only be triggered after prolonged and ineffective “negotiation”, there is a very real danger that BT may enjoy unwarranted first mover advantages to the detriment of the development of competition. Again, we would urge Ofcom to take a more proactive role where appropriate, such as over the need for so-called “one hop migration” and, potentially MSAN interconnection where the issues are starting to become better understood.

*6. Do you agree with the issues Ofcom has identified that need to be addressed by all communication providers as they move to NGNs and what others are there?*

The issues noted are agreed as being important to the industry as a whole in making the transition to NGN. We have a couple of specific comments to make, that are noted below. In addition we query the absence of Essential Requirements Guidelines from the topics identified.

Re 3.75, we support the NICC position on the technical standards that are required and that a single commercial direction on them is optimal to ensure that standards appropriate to the needs of industry are delivered. Ofcom has a role in encouraging convergence between traditional operators and Internet based operators who are starting from different bases. This is not part of the NICC remit and perhaps points to

what the role of "NGNCo" could most usefully be as a focus for cross industry NGN commercial and regulatory policy development.

Re3.77, We note the idea of an exchange point architecture but believe that the architecture for interconnect must evolve predominantly through commercial negotiation, driven by a clear understanding of appropriate cost drivers, as noted earlier. Until such drivers are clearly understood, we support the continuation of the "lowest common denominator" of a "point to point" operator to operator model as exists in the current TDM interconnects. The introduction of other ill understood models may introduce further inappropriate arbitrage opportunities and/or deter appropriate network investment. In addition, strategically such exchange points could become vulnerable to what are currently ill understood traffic, fault and potential fraud related activity that in the present security climate would be very ill advised.

*7. Do you agree with the policy principles Ofcom has identified for consumer protection during the move to NGNs?*

Kingston agrees with the principles that Ofcom has identified, with the same caveats as in the UKCTA response. We would go further and state that it is absolutely guaranteed that the customer experience will deteriorate in some ways, both on a short term transitional basis and more importantly on a permanent basis for such attributes as E2EQoS. Customers will see benefits in terms of new service capabilities, and/or reduced prices, but these may not be immediately apparent. Industry and Ofcom must collaborate effectively in communicating consistent and comprehensively with customers about these issues

*8. Do you agree with the overall processes for developing 21CN obligatory products?*

Architectural models derived in this forum are directly related to the market power of BT and are commercially weighted to their internal network considerations. The process, as outlined, does provide for consultation and agreement by industry but lacks clarity on how conflicts and disagreement can be resolved. If agreement cannot be reached, timely resolution of the dispute must be available from Ofcom, who should be prepared to require BT to delay roll-out until it meet its obligations in an acceptable manner. In addition, the effective development of new interconnect arrangements need the involvement of system vendors which is currently available through the NICC process but not 21CN Consult.

*9. Do you believe that there is a need to co-ordinate and steer cross industry NGN issues which is not met by existing bodies and process?*

As mentioned in our response to question 6, we are increasingly of the view that some form of forum to address policy and commercial issues is needed. It is important, however, that this does not overlap significantly with other existing activities in 21Consult workgroups, or NICC. Industry resources are spread thinly already; wasteful duplication of activities would be very counter productive. The development of tightly focussed terms of reference and effective all party buy in would be crucial.

*10. Do you agree that there is a need to co-ordinate the planning and implementation of NGNs on an industry wide basis?*

No – we believe that bi-lateral discussions and implementation planning should generally be sufficient. The Implementation Working Group of 21Consult **should** have a role to play in coordinating the considerable impact of 21CN introduction across industry, but it will need to develop its terms of reference further, and establish clear escalation routes in the event of disagreement or problems being encountered, and produce and manage a clear project plan that is visible to all involved parties.

*11. Is there a need for a process to address the wider consumer protection issues arising from the move to NGNs?*

The Communications Working Group of 21CN may prove effective in agreeing and communicating common messages to customers affected by the 21CN migration process. It would not, however, be the right forum for agreeing broader NGN related communications across the industry which could be addressed by the proposed new policy and commercial group.

*12. Has Ofcom identified all the correct industry processes that will be needed to deal with move to NGNs?*

Kingston endorses the comments made by NICC.

*13. Do you agree that it appropriate for Consult 21 to continue to take responsibility for developing detail of SMP product migration and development of new products?*

Again, the avoidance of overlap with other pre-existing groups is vital. CPS/WLR, LLU, “Broadband access” and other regulated products areas are dealt with both in 21Consult and standing industry groups. Further clarity on which group is doing what is badly needed, particularly with the overlay of both 21CN and the likely TSR “EoI” undertakings on existing product roadmaps and development paths.

*14. Do you agree that Consult 21 combined with bi-lateral commercial negotiation and backed-up by Ofcom dispute resolution is the best approach to the agreeing the commercial aspects of new and migrated products?*

21Consult is essentially a BT managed process, rightly seeking to consult with its customers about the issues surrounding migration to its NGN implementation. A major element of this is identifying the impact on SMP designated and other wholesale products. To date, little real progress has been made on any real “commercial” issues related to this. It remains to be seen whether 21Consult will be effective in this role, but we suspect that a more neutral, “industry wide” body as discussed elsewhere in this response may prove better suited to the analysis of policy and commercial options. There is a risk that reliance on bilateral negotiation results in BT tending towards a “lowest common denominator” aggregate demand approach, which may not succeed in satisfying any operator’s actual requirement. An open forum to discuss product requirements and priorities is more likely to result in products that are fit for purpose.

*15. Do agree that NICC should continue to be responsible for standardisation of NGN interconnect, but needs to be re-constituted as an independent industry owned body?*

Kingston endorses the comment made by NICC. NICC is fully capable of developing the required UK standard interconnection technical documentation. However, it is not a body that has a clear commercial agenda or forum to which to address non technical issues for consideration/advice/direction. Kingston sees no compelling reason why it should be reconstituted as an independent industry owned body, and potentially adverse possibilities if it is so. Kingston notes that some of the responsibilities proposed for NICC are essentially those of the National Regulatory Authority themselves which do not seem appropriate to an independent industry body.

*16. What are your views on the establishment of a new multi-lateral industry group to address NGN issues, its terms of reference and governance arrangements?*

As noted earlier, we believe that an appropriately focussed policy and commercial forum for NGN issues could add value, but its ToR and remit need careful development and must have buy in from all key players. Kingston also endorses the comments made by NICC.

*17. What are your views on the establishment of a NGN operational dispute adjudicator, its terms of reference and governance arrangements?*

As argued in the UKCTA response, we remain to be convinced that there is sufficient scope for an “OTA” like scheme to be effective, given that most disputes and issues are likely to have policy dimensions for the foreseeable future.

*18. Would your organisation be prepared to sign-up to such an adjudication scheme and abide by the adjudicator’s decisions?*

Subject to agreement of appropriate ToR, remit and procedures – yes.

Should you have any questions relating to this submission, please do not hesitate to contact me.

**Nancy Saunders**  
**Regulatory and Interconnect Manager**